Supreme Court, U.S.
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No. 03-

In the Supreme Court of the United States

ILLINOIS, PETITIONER,

v.

RAYMOND E. HARRIS, RESPONDENT.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois

PETITION FOR A WRIT OF CERTIORARI

LISA MADIGAN
Attorney General of Illinois
GARY FEINERMAN*
Solicitor General
LINDA D. WOLOSHIN
Assistant Attorney General
100 West Randolph Street
Chicago, Illinois 60601
(312) 814-3698

*Counsel of Record

Counsel for Petitioner

QUESTION PRESENTED

Whether the Fourth Amendment requires reasonable, articulable suspicion to justify performing a warrant check of a passenger during a legitimate traffic stop.*

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* This question is similar to the question presented in *Illinois v. Caballes*, No. 03-923 (pet. for cert. pending), which is: Whether the Fourth Amendment requires reasonable, articulable suspicion to justify using a drug-detection dog to sniff a vehicle during a legitimate traffic stop.

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PETITION FOR A WRIT OF CERTIORARI

The State of Illinois respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Illinois in this case.

OPINIONS BELOW

The opinion of the Supreme Court of Illinois (App. 1a-27a) is reported at 207 Ill. 2d 515, 802 N.E.2d 219 (2003). The opinion of the Appellate Court of Illinois, Third District (App. 28a-34a), is reported at 325 Ill. App. 3d 262, 758 N.E.2d 469 (2001). The oral ruling of the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois (App. 35a-36a), is unreported.

JURISDICTION

The Supreme Court of Illinois entered judgment on November 20, 2003. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT

Following a jury trial, respondent was convicted of the unlawful possession of a controlled substance, 720 ILCS

570/402(c) (West 1996). The Illinois Appellate Court reversed the conviction, and the Illinois Supreme Court affirmed, holding that the trial court erred in denying respondent's motion to quash arrest and suppress evidence. Acknowledging that it was deepening an existing split among numerous courts, the court ruled that the Fourth Amendment prohibited the police from performing a warrant check on respondent — a passenger in a vehicle stopped for making an illegal left turn — without reasonable, articulable suspicion.

1. On September 27, 1997, a Will County police officer observed an automobile make an illegal left turn. The officer pulled over the car and asked the driver for his driver's license and proof of insurance. The driver did not have his license and, after lying about his name, admitted that his license was suspended or revoked. App. 2a.

Consistent with his usual practice, upon learning that the driver of a stopped vehicle could not legally drive, the officer requested identification from respondent, who was a passenger in the front seat. The officer requested this information to determine whether respondent had a valid driver's license; if so, the officer intended to release the car to respondent and thereby avoid a tow. After respondent produced his state identification card, the officer ran respondent's and the driver's information through county dispatch. The computer check confirmed that the driver's license was suspended, and revealed that respondent had an outstanding warrant for his arrest. *Id.* 2a-3a.

The officer advised respondent of the warrant, placed him under arrest, and conducted a search incident to arrest. During the search, the officer discovered on respondent's person a pea-sized rock of cocaine and a "Chore Boy," which is a scrubbing pad that can be used to heat up cocaine prior to its being smoked. The officer then searched the car and found another pea-sized rock of cocaine on the back seat. *Id.* 3a-4a.

2. Based solely upon the cocaine found on his person, respondent was charged with the unlawful possession of a controlled substance. Respondent filed a motion to quash his arrest and suppress evidence on Fourth Amendment grounds. App. 2a. The state trial court denied the motion, reasoning that the officer asked for respondent's identification in order to determine whether respondent had a valid driver's license, which would have avoided a tow. *Id.* 35a-36a. The court further noted that upon discovering the warrant, the officer properly arrested respondent and properly conducted a search incident to arrest, revealing the cocaine. *Ibid.*

Following trial, a jury found respondent guilty. The trial court entered the conviction and sentenced respondent to 28 days in jail, with credit for 28 days previously served, and to 24 months probation. *Id.* 4a.

3. The Illinois Appellate Court reversed the conviction. App. 28a-34a. Finding that respondent did not voluntarily comply with the officer's request for identification, the court held that the request itself, and therefore the ensuing arrest and search of respondent's person, violated the Fourth Amendment. *Id.* 32a-33a. The court reversed the conviction outright on the ground that the prosecution could not have proceeded without the fruits of the search. *Id.* 34a.

4. In a four-to-three decision, the Illinois Supreme Court affirmed the appellate court's judgment, but on different grounds. App. 1a-27a. Contrary to the appellate court, the majority held that the officer's request for respondent's identification did not violate the Fourth Amendment. *Id.* 9a-10a. The court explained that the request was "facially innocuous" and "gave the officer the opportunity to identify a potential witness to a traffic violation and to the officer's actions during the course of the stop, providing a certain level of protection to both the officer and the driver of the vehicle." *Id.* 10a. The court added that "the request for identification, in and

of itself, did not change the fundamental nature of the stop by converting it into a general inquisition about past, present and future wrongdoing." *Ibid.*

However, the majority held that the officer violated the Fourth Amendment by taking the additional step of performing a warrant check on respondent. *Id.* 10a-15a. In so ruling, the majority applied the analysis set forth in *People v. Gonzalez*, 204 Ill. 2d 220, 789 N.E.2d 260 (2003), which held that the reasonableness of a traffic stop under the Fourth Amendment depends upon both its duration and its scope. *Id.* 10a (citing *Gonzalez*, 204 Ill. 2d at 233, 789 N.E.2d at 268-269). Focusing upon the scope element of the inquiry, the majority found that the warrant check of respondent was not "directly related to the initial justification for the traffic stop," which was to issue a warning or citation to the driver for making an illegal left turn. *Id.* 12a-13a. The majority then noted that the officer "exceeded the proper scope of the traffic stop when he retained [respondent's] identification card and performed a check for outstanding warrants for [respondent's] arrest." *Id.* 15a. Having concluded that the warrant check violated the Fourth Amendment because it improperly expanded the scope of the traffic stop, the majority found it unnecessary to ascertain whether the check impermissibly extended the stop's duration. *Id.* 13a.

The majority recognized that its decision deepened an existing split regarding whether and, if so, under what circumstances the Fourth Amendment allows an officer to perform a warrant check on a passenger during a lawful traffic stop. *Id.* 14a-15a, citing *People v. Jackson,* 39 P.3d 1174 (Colo. 2002); *Sikes v. State,* 323 S.C. 28, 31, 448 S.E.2d 560, 563 (1994); *Holt v. State,* 227 Ga. App. 46, 487 S.E.2d 629 (1997); *Commonwealth v. Alvarez,* 44 Mass. App. 531, 692 N.E.2d 106 (1998); *Hornberger v. American Broadcasting Cos.*, 351 N.J. Super. 577, 799 A.2d 566 (2002); *State v. Higgins,* 884 P.2d 1242, 1245 n. 2 (Utah 1994); *State v. Johnson,* 805 P.2d 761 (Utah 1991); *State v. Mennegar,* 114 Wash. 2d 304, 787 P.2d

1347 (1990); *State v. Larson*, 93 Wash. 2d 638, 611 P.2d 771 (1980); *State v. Landry*, 588 So.2d 345, 348 (La. 1991); *People v. O'Neal*, 32 P.3d 533 (Colo. App. 2000); *State v. Chagaris*, 107 Ohio App. 3d 551, 669 N.E.2d 92 (1995).

Having surveyed what it accurately characterized as the "tempestuous discourse" among the courts, the majority adhered to its view that an officer must have reasonable suspicion to conduct a warrant check of a passenger during a lawful traffic stop. App. 15a. The majority indicated that it would carve an exception if "the passenger's conduct . . . cause[d] the officer to fear for his safety." *Id.* 16a. The majority further suggested that no reasonable suspicion would be necessary if "the driver and the passenger, knowing that the driver is being arrested or is otherwise incapable of driving, agree that the passenger should drive the vehicle." *Id.* 17a. However, because the officer in this case did not have reasonable suspicion — and because the arresting officer did not testify to having safety concerns and the evidence did not suggest that the driver and respondent agreed that respondent would drive the car — the majority held that the warrant check was unreasonable under the Fourth Amendment and therefore that the trial court should have suppressed the evidence obtained during the search of respondent's person. *Id.* 19a.

Joined by Justices Thomas and Garman, Justice Fitzgerald dissented. The dissent agreed with the majority that "the officer's mere request for identification from the passenger was facially innocuous, did not suggest official interrogation," and therefore did not violate the Fourth Amendment. *Id.* 21a. However, the dissent concluded that the warrant check, which was nothing more than "an unobtrusive check of information that is part of the public record," "did not exceed the bounds of the fourth amendment." *Id.* 20a.

The dissent explained that "[a] warrant check is simply a computerized retrieval of information in the public record —

information which indicates whether a court has entered a written order commanding the arrest of a specific person. See 725 ILCS 5/107-1 (West 2002)." *Id.* 21a-22a. Noting that "a warrant check is never intrusive in the way that police questioning of a passenger can be," and that "the passenger has no reasonable expectation of privacy in the information retrieved during a warrant check," the dissent stated that "unless the warrant check impermissibly prolongs the passenger's detention — which was not the case here — no fourth amendment concerns arise." *Id.* 22a. The dissent added:

> Stated another way, if a police officer lawfully detains a passenger like defendant by lawfully stopping the vehicle in which he is riding; lawfully obtains the passenger's identification; conducts a check for information in which the passenger can claim no privacy interest (information which even the majority could not seriously contend should be unavailable to police); does not require the passenger to implicate himself in possible criminal wrongdoing (as would, for example, a series of pointed questions irrelevant to the stop); does not intrude any further on the passenger's privacy or security (as would, for example, a search of his person or property); and does so without unnecessarily prolonging the passenger's detention, *in what conceivable way have the passenger's fourth amendment rights been compromised? Where is the governmental intrusion?*

Id. 22a-23a (emphasis in original).

The dissent noted that "[u]nder the majority's reasoning, even if [the officer] was acquainted with the passenger and made no request for identification, he would have been prohibited from running a warrant check." *Id.* 23a. This, the dissent found, the majority's opinion "stripp[ed] any notion of common sense out of the 'reasonableness' equation" and "create[d] a

constitutional right to avoid justice." *Id.* 23a-24a. And with respect to the majority's contention that the officer did not testify that he feared for his own safety, the dissent observed that "[o]fficer safety is *always* at issue during a vehicle stop," particularly where passengers are present. *Id.* 25a (emphasis in original) (citing *Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977), and *Maryland v. Wilson*, 519 U.S. 408, 413 (1997)). For these reasons, the dissent would have affirmed the trial court's denial of respondent's motion to suppress.

On the same day it decided this case, the Illinois Supreme Court issued *People v. Caballes*, 207 Ill. 2d 504, 802 N.E.2d 202 (2003), pet. for cert. filed, 72 USLW 3451 (Dec. 18, 2003) (No. 03-923). The two cases are closely related. Here, the majority held that the Fourth Amendment requires police officers to have reasonable, articulable suspicion before conducting a warrant check of a passenger during a lawful traffic stop; in *Caballes*, the same 4-3 majority held that the Fourth Amendment requires police officers to have reasonable suspicion before using a drug-detection dog to sniff a vehicle during a lawful traffic stop.[1]

REASONS FOR GRANTING THE PETITION

As the Illinois Supreme Court observed, courts across the Nation have engaged in a "tempestuous discourse" over whether the Fourth Amendment prohibits police from conducting a warrant check on a passenger during a lawful traffic stop. Deepening an existing split, the Illinois court erred in aligning itself with courts holding that reasonable suspicion is generally necessary to conduct such checks. Because a warrant check does not implicate the Fourth Amendment, performing a warrant check on a passenger during a valid traffic stop does

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[1] The same 4-3 majority decided *People v. Lidster*, 202 Ill. 2d 1, 779 N.E.2d 855 (2002), rev'd sub nom., *Illinois v. Lidster*, 124 S. Ct. 885 (2004).

not invalidate the stop. Put another way, a Fourth Amendment non-event (here, a warrant check) remains a Fourth Amendment non-event even if conducted during a legitimate traffic stop. And a legitimate traffic stop remains legitimate when a Fourth Amendment non-event occurs during the stop.

This Court should grant certiorari to ensure uniformity on this important and recurring question and to reverse the Illinois Supreme Court's manifestly erroneous ruling.

A. This Court Should Resolve The Conflict Over Whether The Fourth Amendment Requires Police To Have Reasonable, Articulable Suspicion Before Conducting A Warrant Check Of A Passenger During A Legitimate Traffic Stop.

Before the Illinois Supreme Court decided this case, numerous courts — including several state courts of last resort — had considered the extent to which (if any) the Fourth Amendment prohibits police from conducting a warrant check of a passenger during the course of an otherwise valid traffic stop. As the majority below recognized, those courts have reached conflicting results and remain hopelessly deadlocked.

At least two state courts of last resort have held that the Fourth Amendment, while allowing police officers to request identification from passengers during a lawful traffic stop, prohibits officers from using the requested information to run a warrant check in the absence of reasonable suspicion. See *People v. Jackson*, 39 P.3d 1174, 1186-1190 (Colo. 2002) (en banc); *Sikes v. State*, 323 S.C. 28, 31-32, 448 S.E.2d 560, 562-563 (1994).

The Louisiana Supreme Court reached a different result in *State v. Landry*, 588 So.2d 345 (La. 1991), a case presenting facts nearly identical to those presented here. After stopping a car for speeding at 1:00 a.m. in a New Orleans residential neighborhood, police officers ordered the driver and his

passenger (the defendant) out of the car. While one officer checked the driver's license of the driver, the other officer asked the defendant for identification. The defendant produced his driver's license, the officer ran a computer check for warrants in the defendant's name, and the check revealed that the defendant had an outstanding attachment. The officer arrested the defendant pursuant to the attachment and, during a search incident to arrest, discovered cocaine on the defendant's person. *Id.* at 346.

After being charged with possession of cocaine, the defendant moved to suppress the evidence discovered during the search. The trial court denied the motion and the defendant entered a conditional guilty plea. *Id.* at 346-347. On appeal, the Louisiana Supreme Court affirmed the trial court's decision. Assuming *arguendo* that the defendant had been "seized" during the stop, the court held that the "simple request for identification" was a "limited additional intrusion into defendant's privacy" that "d[id] not taint the information which was obtained and which led to the foundation for defendant's arrest." *Id.* at 348.

Similar circumstances were presented in *State v. Mennegar*, 114 Wash. 2d 304, 787 P.2d 1347 (1990). A municipal police officer stopped a car for speeding. The driver exited the car, gave the officer a fictitious name, and told him that he had no driver's license or identification. After determining that the driver had alcohol on his breath and should not drive, and after the driver stated that he wanted his car released to the defendant (who at the time was a passenger), the officer asked the defendant whether he had a valid driver's license. The defendant handed his license to the officer, who ran a check on the license and discovered an outstanding warrant for the defendant's arrest. The officer then arrested the defendant and conducted a search of his person incident to the arrest, which revealed 13.3 grams of cocaine in the defendant's possession. *Id.* at 306-307, 787 P.2d at 1348.

After being charged with possession of a controlled substance, the defendant moved to suppress the cocaine. The trial court found that the officer had asked the defendant for his driver's license "only . . . to determine if he could drive the intoxicated driver's car from the scene," but granted the motion on the ground that "an officer cannot ask a passenger for his driver's license unless there is reason to suspect him of criminal activity." *Id.* at 307-308, 787 P.2d at 1349. A divided state intermediate appellate court affirmed, see *id.* at 307-308, 787 P.2d at 1349, and the Washington Supreme Court reversed. Explaining that the officer's request was "made for noncriminal noninvestigatory purposes," the court held that "it was reasonable and legal for the officer to request the passenger's driver's license and check to ensure that the license was valid before turning the intoxicated driver's vehicle over to the passenger." *Id.* at 313, 787 P.2d at 1351-1352. Having found the computer check lawful, the court concluded that the arrest, and therefore the search incident to arrest, was lawful as well. *Id.* at 314, 787 P.2d at 1352.

The Louisiana Supreme Court's ruling in *Landry* is broader than the Washington Supreme Court's ruling in *Mennegar* — unlike *Mennegar*, *Landry* did not limit its holding to situations where the police are attempting to determine whether the passenger is legally able to drive the car. These two slightly different approaches are reflected in other cases. For example, in *State v. Higgins*, 884 P.2d 1242 (Utah 1994), the Utah Supreme Court upheld a warrant check of a passenger under circumstances similar to those presented in *Mennegar*. *Id.* at 1245 n.2. And at least three other courts have upheld warrant checks of passengers where, as in *Landry*, there was no indication that the police sought to determine whether the passenger could lawfully drive the car. See *State v. Jones*, 27 Kan. App. 2d 476, 483-484, 5 P.3d 1012, 1017-1018 (2000), aff'd on other grounds, 270 Kan. 526, 17 P.3d 359 (2001); *State v. Chagaris*, 107 Ohio App. 3d 551, 556-557, 669 N.E.2d 92,

95 (1995); *State v. Ybarra*, 156 Ariz. 275, 276, 751 P.2d 591, 592 (App. 1987).

The Kansas Supreme Court took an entirely different approach in *State v. Jones*, 270 Kan. 526, 17 P.3d 359 (2001). *Jones* presented a typical factual scenario — the police stopped a car for speeding; asked a passenger for identification; ran a warrant check on the passenger, which revealed an outstanding warrant; and conducted a search incident to arrest, which revealed illegal drugs on the passenger's person. *Id.* at 527, 17 P.3d at 360. In holding that the search satisfied the Fourth Amendment, the court did not resolve whether the Fourth Amendment demands reasonable suspicion to perform a warrant check. Rather, the court held that regardless of whether the warrant check was valid, "once [the officer] determined that there was a warrant out for [the defendant's] arrest, [the officer] had a right to arrest [the defendant], whether he had been lawfully or unlawfully detained at that point in time," and that "[o]nce [the officer] had a right to lawfully arrest [the defendant] on the outstanding warrant, [the officer] had a right to search him incident to the arrest." *Id.* at 527, 17 P.3d at 360. Accord, *United States v. Green*, 111 F.3d 515, 521 (7th Cir. 1997) (when police conduct a warrant check on passenger and discover outstanding warrant for his arrest, fruits of search incident to arrest need not be suppressed even though initial stop was illegal, because the arrest "constituted an intervening circumstance sufficient to dissipate any taint caused by the illegal automobile stop").

In sum, before the Illinois Supreme Court entered the fray, the lower courts had provided dramatically inconsistent answers to the question whether the Fourth Amendment allows police officers to conduct warrant checks of passengers during lawful traffic stops in the absence of reasonable suspicion. Some courts, including the Louisiana Supreme Court in *Landry*, answered in the affirmative. Other courts, namely the Utah Supreme Court in *Higgins* and the Washington Supreme Court

in *Mennegar*, held that warrant checks were permissible where the police were trying to determine whether the passenger could lawfully drive the car. Still other courts, namely the Colorado Supreme Court in *Jackson* and the South Carolina Supreme Court in *Sikes*, held that warrant checks were impermissible. And still other courts, including the Kansas Supreme Court in *Jones*, concluded that the question is moot because an officer who learns of an outstanding warrant has the right to arrest (and conduct a search incident to arrest) even if the law enforcement actions resulting in the warrant's disclosure violated the Fourth Amendment.

Regardless of whether the Illinois Supreme Court's decision in this case is more closely aligned with *Sikes* and *Jackson*, on the one hand, or *Higgins* and *Mennegar*, on the other,[2] the decision remains fundamentally incompatible with *Landry* and *Jones* and deepens the already profound conflict among the courts on the question presented. The conflict is intractable and ripe for resolution.

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[2] It is unclear where precisely on the continuum the Illinois Supreme Court's decision falls. While recognizing that the arresting officer asked respondent for identification in order to determine whether he was legally able to drive the car from the scene, the majority nonetheless held that the warrant check was unlawful. In this sense, the court's decision more closely resembles the more categorical approach taken *Sikes* and *Jackson*. However, near the end of its opinion, the majority left open the possibility that it would allow a warrant check of a passenger without reasonable suspicion if "the driver and passenger, knowing that the driver is being arrested or is otherwise incapable of driving, agree that the passenger should drive the vehicle." App. 17a (citing *Higgins*, 884 P.2d at 1242). In this sense, the court's decision is more akin to the qualified approach in *Higgins* and *Mennegar*.

B. The Illinois Supreme Court Erred In Holding That The Fourth Amendment Requires Police To Have Reasonable, Articulable Suspicion Before Conducting A Warrant Check On A Passenger During A Legitimate Traffic Stop.

The majority and the dissent below agreed, correctly, that the arresting officer's request for respondent's identification, in itself, was "facially innocuous" and did not violate the Fourth Amendment. App. 10a, 21a. Thus, the question here is whether the *extra* step of using the requested information to run a warrant check on respondent violated the Fourth Amendment. The answer is No.

As the dissent observed, a warrant check is "an unobtrusive check of information that is part of the public record." App. 20a. Information regarding a passenger's outstanding warrants is obtained not by questioning or searching the passenger, but by calling a dispatcher and/or typing keystrokes on a computer. A passenger has no conceivable Fourth Amendment interest in shielding from the police an outstanding warrant — which, after all, is "a written order from a court directed to a peace officer, or to some other person specifically named, commanding him to arrest a person." 725 ILCS 5/107-1 (West 2002); cf. *New York v. Class*, 475 U.S. 106, 113-114 (1986) (motorist has no reasonable expectation of privacy in Vehicle Identification Number on car). By contrast, the police and the public have a strong interest in ensuring that persons with outstanding warrants are arrested, taken off the streets, and brought to justice. Thus, so long as it does not prolong a traffic stop beyond its ordinary duration, a warrant check reveals crucial information without any Fourth Amendment intrusion. See *Michigan v. Summers*, 452 U.S. 692, 700 n.12 (1981) (quoting 3 W. LaFave, *Search and Seizure* § 9.2, pp. 36-37 (1978)).

In holding that officers must have reasonable suspicion before conducting a warrant check of a passenger during a

lawful traffic stop, the majority of the Illinois Supreme Court applied a Fourth Amendment analysis where no Fourth Amendment concerns are implicated. And in ruling that the warrant check of respondent "exceeded the proper scope of the traffic stop" (App. 15a), the majority failed to recognize that a warrant check, in itself, is a Fourth Amendment non-event. Where, as here, a Fourth Amendment non-event occurs during the ordinary course of a lawful traffic stop and does not extend the stop beyond its ordinary duration, there can be no Fourth Amendment violation. The majority's contrary conclusion is incorrect and should be reversed.

The majority's analysis is not saved by its recognition that a warrant check is permissible where "[t]he passenger's conduct . . . cause[s] the officer to fear for his safety." *Id.* 16a. This Court rejected such a safety-oriented approach in *Maryland v. Wilson*, 519 U.S. 408 (1997). *Wilson* considered whether the Fourth Amendment prohibits an officer making a traffic stop from ordering passengers to exit the car pending completion of the stop. This Court held that the generalized risk of harm present during traffic stops justifies in *all* instances an officer's order that passengers exit the car, regardless of whether the officer could articulate a reason why he or she feared for his or her safety in any particular instance. *Id.* at 414-415 (citing *Summers*, 452 U.S. at 702-703). The two dissenters, by contrast, maintained that officers should be allowed to order passengers to exit a stopped car only if warranted under the circumstances. See *id.* at 415-422 (Stevens, J., dissenting); *id.* at 422-424 (Kennedy, J., dissenting). Thus, in holding that an officer may not conduct a warrant check of a passenger unless specific safety concerns were present, the majority below did not adhere to *Wilson*, which teaches that police action directed towards passengers need not be justified by specific, articulable safety concerns that arise during the stop.

C. The Question Presented Is Important And Recurring.

As demonstrated by the cases cited in Section A, *supra*, and by the majority below (App. 14a-15a), the question presented here recurs with great frequency. And the importance of the question to the administration of justice is beyond question. Police officers routinely perform outstanding warrant checks not only on drivers, but also on passengers, during the course of lawful traffic stops. Those checks protect the safety and well-being of the officers, and also of the public at large, by alerting the police to the presence of individuals subject to arrest. The lower courts remain deeply and hopelessly divided over whether and, if so, to what extent the Fourth Amendment limits the use of such warrant checks. There is a pressing need for this Court's intervention to resolve the issue.

CONCLUSION

The petition for a writ of certiorari should be granted. At a minimum, this petition should be held pending consideration of the petition for certiorari in *Illinois v. Caballes*, No. 03-923.

Respectfully submitted.

LISA MADIGAN
Attorney General of Illinois
GARY FEINERMAN*
Solicitor General
LINDA D. WOLOSHIN
Assistant Attorney General
100 West Randolph Street
Chicago, Illinois 60601
(312) 814-3698

*Counsel of Record

FEBRUARY 2004

APPENDIX

Supreme Court of Illinois

Docket No. 91547 - Agenda 19 - September 2002.

Filed: November 20, 2003

THE PEOPLE OF THE STATE OF ILLINOIS, Appellant, v. RAYMOND HARRIS, Appellee.

Justice FREEMAN delivered the opinion of the court:

At issue in this case is whether a police officer, having obtained an identification card from a passenger in a vehicle during a traffic stop, may perform a check to determine whether there are outstanding warrants for the passenger's arrest. We hold that, under the circumstances at bar, the warrant check was outside the scope of the traffic stop and was impermissible.

BACKGROUND

At approximately 4:30 p.m. on September 27, 1997, Officer Vernard Reed of the Will County sheriff's department, observed a vehicle, driven by Keith Weathersby, make an illegal left turn from Route 53 onto Mills Road. Officer Reed initiated a traffic stop. During the course of the traffic stop, Officer Reed requested identification from defendant, a passenger in the vehicle. Officer Reed performed a check on defendant's identification card and discovered that defendant had an outstanding warrant for failure to appear in court. Officer Reed placed defendant under arrest. In an ensuing search, officer Reed recovered a pea-sized rock of cocaine and a "Chore Boy"[1] from defendant's pocket.

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[1] A "Chore Boy" is a scrubbing pad that can be used to heat up cocaine. The cocaine can then be smoked.

Defendant was charged by indictment, in the circuit court of Will County, with the unlawful possession of a controlled substance, a Class 4 felony. 720 ILCS 570/402(c) (West 1996). He filed a motion to quash arrest and suppress evidence, arguing that Officer Reed had neither a warrant to search him nor probable cause to believe that he had committed a crime.

At a subsequent hearing on the motion, defendant testified that he was a passenger in the car stopped by Officer Reed. The officer told the driver that he had made an illegal left turn and requested identification from the driver. Sometime later, the officer approached defendant and asked him for identification. Defendant complied, giving the officer a state identification card. The officer returned to the squad car, ran a warrant check, and discovered that defendant had an outstanding warrant for failure to appear in court. The officer had defendant step out of the car, handcuffed defendant and searched him. Defendant stated that at no point during the stop did Officer Reed inform defendant that he wanted to see defendant's identification to determine whether defendant had a valid driver's license.

Officer Reed testified that when he first initiated the traffic stop, he requested identification from the driver of the vehicle. The driver, Keith Weathersby, stated that he did not have his driver's license on his person. The driver gave his date of birth, and identified himself as either Darren or Darryl Weathersby. Officer Reed transmitted the driver's information to county dispatch and learned there was no valid driver's license for anyone by that name. Officer Reed confronted the driver, who then gave his correct name and admitted that his license was either suspended or revoked. Officer Reed transmitted the new information to county dispatch and confirmed that Weathersby's license was suspended or revoked.

Officer Reed testified that it was his usual practice, once he determined that a driver could not legally drive, to request identification from the passengers in the car to determine

whether another person could drive the car. In keeping with this practice, Officer Reed asked defendant for identification, intending to release the vehicle to defendant if defendant had a valid driver's license. At no time during the traffic stop, however, did Officer Reed ask defendant whether defendant was able to drive the car. Further, defendant's behavior had not aroused suspicion and Officer Reed did not believe that defendant had committed any wrongdoing. Having obtained defendant's identification card, Officer Reed ran the information through county dispatch and discovered that defendant had an outstanding warrant. Officer Reed advised defendant of the outstanding warrant, placed defendant under arrest, handcuffed defendant and searched him, finding the pea-sized rock of cocaine and the "Chore Boy." Officer Reed also searched the car incident to defendant's arrest. Officer Reed found another pea-sized rock of cocaine on the back seat and arrested Weathersby.

Lastly, Officer Reed testified that an officer has the authority to arrest any person driving with a suspended license. Pursuant to such an arrest, the officer also has the authority to impound the vehicle and perform an inventory search. Officer Reed stated that he had the right to search the car once he found out that Weathersby's license was suspended.

At the conclusion of the hearing, the circuit court denied defendant's motion to quash arrest and suppress evidence. The court found that Officer Reed requested identification from defendant in order to determine whether defendant had a valid driver's license. Officer Reed intended to release the car to defendant, if defendant could legally drive the car, in order to avoid towing the vehicle. The cause proceeded to trial.

At trial, Officer Reed testified that when he activated his emergency lights, Weathersby pulled the car to the side of the road. Although Officer Reed stated that he requested identification from defendant in order to determine whether defendant

could drive the vehicle, officer Reed acknowledged that, in his police report, he stated that the car was legally parked. Officer Reed also testified that once he determined there was no valid driver's license for a Darrell Weathersby, he confronted the driver and obtained the driver's correct name. Officer Reed then turned to defendant and asked him for identification. Having obtained defendant's identification card, Officer Reed ran a check on both defendant and Weathersby. County dispatch informed him that Weathersby's license was suspended and that defendant had an outstanding warrant. Officer Reed arrested defendant and searched him, finding the cocaine at issue. Because Officer Reed found a controlled substance on defendant, Officer Reed searched the car to see if it also contained drugs. Officer Reed explained, however, that in the absence of a passenger eligible to drive the vehicle, he would have done an inventory search of the vehicle and recovered the cocaine from the back seat.

The jury found defendant guilty of unlawful possession of a controlled substance. Subsequently, the circuit court sentenced defendant to 28 days in jail with credit for 28 days previously served and to a term of probation for 24 months. The court also ordered defendant to pay court costs and certain fines.

Defendant appealed, arguing that the circuit court should have granted the motion to quash arrest and suppress evidence. The appellate court agreed. The court held that defendant did not voluntarily comply with Officer Reed's request for identification. Officer Reed conveyed the message that compliance with the request for identification was mandatory. Under the circumstances, no reasonable person would have felt free to disregard the officer and terminate the encounter without tendering identification. 325 Ill. App. 3d 262, 266, 259 Ill. Dec. 346, 758 N.E.2d 469.

We granted the State's petition for leave to appeal. 177 Ill. 2d R. 315.

DISCUSSION

A. Standard of Review

As an initial observation, we note that the case at bar involves only the suppression of the evidence recovered from defendant during the course of the traffic stop. We are not called upon to determine any charges pressed upon defendant pursuant to the outstanding warrant for his arrest. As noted above, the circuit court denied defendant's motion to quash arrest and suppress evidence. Generally, a motion to suppress evidence presents mixed questions of law and fact: the trial court first weighs the evidence and determines the facts surrounding the complained-of conduct, after which it decides whether, as a matter of law, these facts constitute an unconstitutional seizure. *People v. Thomas*, 198 Ill. 2d 103, 108, 259 Ill. Dec. 838, 759 N.E.2d 899 (2001); *People v. Shapiro*, 177 Ill. 2d 519, 524, 227 Ill. Dec. 142, 687 N.E.2d 65 (1997). A reviewing court accords great deference to the factual findings of the trial court. *Thomas*, 198 Ill. 2d at 108, 259 Ill. Dec. 838, 759 N.E.2d 899. However, the reviewing court considers *de novo* the trial court's ultimate determination to grant or deny the defendant's motion to suppress. *People v. Cox*, 202 Ill. 2d 462, 466, 270 Ill. Dec. 81, 782 N.E.2d 275 (2002); *Thomas*, 198 Ill. 2d at 108, 259 Ill. Dec. 838, 759 N.E.2d 899; *People v. Sorenson*, 196 Ill. 2d 425, 431, 256 Ill. Dec. 836, 752 N.E.2d 1078 (2001).

B. Identification/Warrant Check

The State argues that defendant was not seized during the course of the traffic stop and defendant was free to decline Officer Reed's request for identification. According to the State, defendant's compliance with the officer's request was voluntary and evinced a desire to cooperate with the officer's

community caretaking function. Defendant counters that for the duration of the traffic stop both he and Weathersby were detained, and the traffic stop had not come to an end when Officer Reed requested defendant's identification. Thus, defendant reasonably believed that compliance with Officer Reed's request was necessary.

In *People v. Gonzalez*, 204 Ill. 2d 220, 273 Ill. Dec. 360, 789 N.E.2d 260 (2003), we considered whether, during the course of a routine traffic stop, a police officer's request for identification from a passenger violated the federal and state constitutional prohibitions against unlawful seizures (see U.S. Const., amend. IV; Ill. Const.1970, art. I, § 6). As an initial matter, we rejected the State's contention that the fourth amendment was not implicated because the police officer's request for identification qualified as "community caretaking." *Gonzalez*, 204 Ill. 2d at 223-24, 273 Ill. Dec. 360, 789 N.E.2d 260. Citing *People v. Murray*, 137 Ill. 2d 382, 387, 148 Ill. Dec. 7, 560 N.E.2d 309 (1990), we noted that "community caretaking" is a label used to describe consensual police-citizen encounters that typically involve the safety of the public. *Gonzalez*, 204 Ill. 2d at 224, 273 Ill. Dec. 360, 789 N.E.2d 260. A "community caretaking" encounter between the police and a citizen involves no coercion or detention, and, consequently, does not violate the fourth amendment. *Gonzalez*, 204 Ill. 2d at 224, 273 Ill. Dec. 360, 789 N.E.2d 260. We also rejected the State's contention that the passenger was not seized during the course of the traffic stop. *Gonzalez*, 204 Ill. 2d at 224-26, 273 Ill. Dec. 360, 789 N.E.2d 260. We noted that "[t]he Supreme Court has characterized the temporary detention of 'individuals' during a vehicle stop by police, even if only for a brief period and for a limited purpose, as a 'seizure' of 'persons' within the meaning of the fourth amendment." *Gonzalez*, 204 Ill. 2d at 225, 273 Ill. Dec. 360, 789 N.E.2d 260. We concluded that a passenger in a vehicle stopped by the police is "seized" within the meaning of the fourth amendment. *Gonzalez*, 204 Ill. 2d at

226, 273 Ill. Dec. 360, 789 N.E.2d 260; see also *People v. Bunch*, 207 Ill. 2d 7, 277 Ill. Dec. 658, 796 N.E.2d 1024 (2003). Further, because a traffic stop constitutes a seizure of the vehicle's occupants, the stop is subject to the fourth amendment's requirement of reasonableness. *Gonzalez*, 204 Ill. 2d at 226, 273 Ill. Dec. 360, 789 N.E.2d 260, citing *Whren v. United States*, 517 U.S. 806, 809-10, 116 S.Ct. 1769, 1772, 135 L.Ed.2d 89, 95 (1996); see also *Bunch*, 207 Ill. 2d at 13, 277 Ill. Dec. 658, 796 N.E.2d 1024.

Having disposed of the State's preliminary contentions, we considered whether the officer's request for identification from the passenger was reasonable. We noted that a traffic stop is analogous to a *Terry* investigatory stop (see *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)). *Gonzalez*, 204 Ill. 2d at 226, 273 Ill. Dec. 360, 789 N.E.2d 260. Consequently, a court of review judges the reasonableness of a traffic stop by reference to *Terry's* dual inquiry. The traffic stop is deemed reasonable if the officer's action in initiating the stop was justified and if the officer's action during the course of the stop was reasonably related in scope to the circumstances which justified the interference in the first place. *Gonzalez*, 204 Ill. 2d at 228, 273 Ill. Dec. 360, 789 N.E.2d 260, quoting *Terry*, 392 U.S. at 19-20, 88 S.Ct. at 1879, 20 L.Ed.2d at 905; see also *Bunch*, 207 Ill. 2d at 14, 277 Ill. Dec. 658, 796 N.E.2d 1024. With respect to the second inquiry, we explained:

> "[A] rule governing the application of *Terry's* scope requirement to vehicle stops cannot be so permissive as to give police complete discretion in questioning the occupants of a stopped vehicle, nor can it be so limiting that any meaningful law enforcement activities are quashed. We believe the better approach, the one that strikes the proper balance, is that expressed by Judge Murphy in his partial concurrence and partial dissent in [*United States v.*] *Holt* [264 F.3d 1215 (2001)]:

> '*Terry's* scope requirement is a common sense limitation on the power of law enforcement officers. It prevents law enforcement officials from fundamentally altering the nature of the stop by converting it into a general inquisition about past, present and future wrongdoing, absent an independent basis for reasonable articulable suspicion or probable cause. The scope doctrine does not, however, prevent officers from engaging in facially innocuous dialog which a detained motorist would not reasonably perceive as altering the fundamental nature of the stop.' *Holt,* 264 F.3d at 1240 (Murphy, J., concurring in part and dissenting in part).

Thus, in determining whether police questioning during the course of a traffic stop satisfies *Terry's* scope requirement, we must consider, as an initial matter, whether the question is related to the initial justification for the stop. If the question is reasonably related to the purpose of the stop, no fourth amendment violation occurs. If the question is not reasonably related to the purpose of the stop, we must consider whether the law enforcement officer had a reasonable, articulable suspicion that would justify the question. If the question is so justified, no fourth amendment violation occurs. In the absence of a reasonable connection to the purpose of the stop or a reasonable, articulable suspicion, we must consider whether, in light of all the circumstances and common sense, the question impermissibly prolonged the detention or changed the fundamental nature of the stop." *Gonzalez,* 204 Ill. 2d at 234-35, 273 Ill. Dec. 360, 789 N.E.2d 260.

Applying these principles to the traffic stop at issue, we held in *Gonzalez* that the stop was justified at its inception because the vehicle did not have a front license plate. *Gonzalez*, 204 Ill. 2d at 228-29, 273 Ill. Dec. 360, 789 N.E.2d 260. Although the officer's request for identification was not reasonably related to the initial justification for the traffic stop, we also held that the officer's request for identification was reasonable. *Gonzalez*, 204 Ill. 2d at 235-36, 273 Ill. Dec. 360, 789 N.E.2d 260. We observed that the request for identification did not impermissibly prolong the length of the detention. *Gonzalez*, 204 Ill. 2d at 236, 273 Ill. Dec. 360, 789 N.E.2d 260. Further, the request did not change the fundamental nature of the traffic stop. *Gonzalez*, 204 Ill. 2d at 236, 273 Ill. Dec. 360, 789 N.E.2d 260. A simple request for identification is facially innocuous. *Gonzalez*, 204 Ill. 2d at 236, 273 Ill. Dec. 360, 789 N.E.2d 260. It does not suggest official interrogation and is not the type of question or request that would increase the confrontational nature of the encounter. *Gonzalez*, 204 Ill. 2d at 236, 273 Ill. Dec. 360, 789 N.E.2d 260.[2]

As in *Gonzalez*, we reject the State's contention that defendant was not seized during the course of the traffic stop. The encounter between Officer Reed and defendant involved a

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[2] We note that the request for identification, a mere question, did not constitute a seizure or a search. The important consideration in *Gonzalez* was that the passenger was seized by virtue of the traffic stop, and the questioning could not impermissibly prolong the detention or change the fundamental nature of the traffic stop. *Gonzalez* is thus entirely consistent with *Cox*, 202 Ill. 2d 462, 270 Ill. Dec. 81, 782 N.E.2d 275, where this court determined that a traffic stop was unreasonable, without consideration as to whether the dog-sniff test at issue was a search. The principle to take from *Gonzalez* and *Cox* is that an officer's conduct during the course of a traffic stop must be reasonably related in length and scope to the initial justification for the traffic stop.

detention and is not appropriately labeled as "community caretaking." The fourth amendment is implicated when a police officer detains the driver and passenger of a vehicle during the course of a traffic stop.

Because defendant was seized when the vehicle in which he was a passenger was stopped, we must determine whether the seizure was reasonable. To do so, we reference *Terry's* dual inquiry. With respect to the first inquiry, we note that the traffic stop was justified at its inception. Officer Reed observed the vehicle, in which defendant was a passenger, make a left turn from the right-hand lane of Route 53 onto Mills Road. With respect to the second inquiry, we note that Officer Reed's request for identification was facially innocuous. Such a request gave the officer the opportunity to identify a potential witness to the traffic violation and to the officer's actions during the course of the stop, providing a certain level of protection to both the officer and the driver of the vehicle. Moreover, the request for identification, in and of itself, did not change the fundamental nature of the stop by converting it into a general inquisition about past, present and future wrongdoing. *Gonzalez,* 204 Ill. 2d at 236, 273 Ill. Dec. 360, 789 N.E.2d 260.

Once Officer Reed obtained the identification card, however, he proceeded to run a check to determine whether there were outstanding warrants for defendant's arrest. Thus, our review of the reasonableness of the traffic stop does not end with the request for identification, as it did in *Gonzalez.* Nevertheless, *Gonzalez* is instructive because we there emphasized that the scope inquiry into the reasonableness of the traffic stop is dependent upon both the duration of the traffic stop and the manner in which the stop is conducted. *Gonzalez,* 204 Ill. 2d at 233, 273 Ill. Dec. 360, 789 N.E.2d 260; see also *Bunch,* 207 Ill. 2d at 14, 277 Ill. Dec. 658, 796 N.E.2d 1024 ("Under the second prong we consider the *length* of the detention and the *manner* in which it was carried out" (emphases in original)).

With the warrant check at issue, as with the request for identification at issue in *Gonzalez,* we must consider whether the check was related to the initial justification for the stop. If the check was reasonably related to the purpose of the stop, no fourth amendment violation occurred. If the check was not reasonably related to the purpose of the stop, we must consider whether the law enforcement officer had a reasonable, articulable suspicion that would justify the check. If the check was so justified, no fourth amendment violation occurred. In the absence of a reasonable connection to the purpose of the stop or a reasonable, articulable suspicion, we must consider whether, in light of all the circumstances and common sense, the check impermissibly prolonged the detention or changed the fundamental nature of the stop. See *Gonzalez,* 204 Ill. 2d at 235, 273 Ill. Dec. 360, 789 N.E.2d 260; *Bunch,* 207 Ill. 2d at 16, 277 Ill. Dec. 658, 796 N.E.2d 1024.

The warrant check performed by Officer Reed was not related to the initial justification for the traffic stop. Officer Reed initiated the traffic stop because the driver made an illegal left turn. Defendant, however, was simply the front-seat passenger in the car and was not implicated in the traffic violation.[3] Thus, the warrant check was not directly related to

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[3] The passenger in this case is similarly situated to the passenger in *Bunch,* 207 Ill. 2d 7, 277 Ill. Dec. 658, 796 N.E.2d 1024. In *Bunch,* an officer observed a car come to a brief stop but did not see the car's brake lights activate. The officer initiated a traffic stop, arrested the driver because the driver could not produce a driver's license, and asked the passenger, Bunch, to exit the car and stand at the rear of the vehicle. It was approximately 1:10 in the morning, and the officer twice shined a flashlight in Bunch's face as the officer asked Bunch his name and where he was coming from. The officer observed a small, clear plastic item, containing something white, in Bunch's mouth. The officer arrested Bunch and ordered him to spit the object out of his mouth. This court affirmed

the initial justification for the traffic stop. Further, the warrant check was not supported by a reasonable, articulable suspicion that defendant had committed or was about to commit a crime. Officer Reed neither saw nor suspected that defendant had

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the judgment of the appellate court, finding that the trial court erred in denying a motion to quash arrest and suppress evidence. In doing so, we observed that "[p]rior to being approached by [the officer], [Bunch] was simply a *passive occupant* of the car. Although the trial court indicated that the officer had 'numerous' reasons to have a conversation with [Bunch], including explaining to him the reason for the arrest and determining if [Bunch] could be an alternative driver, the questions the officer actually posed were not objectively related to either of these reasons." *Bunch*, 207 Ill. 2d at 16-17, 277 Ill. Dec. 658, 796 N.E.2d 1024.

We note that the actions of the passenger in the present case and the passenger in Bunch are in sharp contrast to the actions of the passenger in *People v. Gonzalez*, 184 Ill. 2d 402, 235 Ill. Dec. 26, 704 N.E.2d 375 (1998). In *Gonzalez*, an officer initiated a traffic stop in a high-crime area at approximately 2:40 in the morning. As the officer exited his squad car, the passenger "abruptly" exited from the rear passenger seat. The officer ordered the passenger to stop and return to the vehicle because the officer "didn't know what [the passenger] was planning on doing." Because the passenger ignored the officer's command and continued to walk away, the officer instructed his police dog to exit the squad car and stand in the "heel" position, at which point the dog began to bark. The officer repeated his instruction to the passenger to stop and return to the vehicle. The passenger turned around, looked at the officer, and walked back to the vehicle after hesitating a few seconds. Having observed this "strange behavior," the officer asked the passenger whether he was carrying any guns, needles or knives, to which the passenger replied "yes." The officer did a "pat down," and discovered a gun inside the front waist area of defendant's pants. This court determined "it is reasonable for a police officer to immediately instruct a passenger to remain at the car, when that passenger, of his own volition, exits the lawfully stopped vehicle at the outset of the stop." *Gonzalez*, 184 Ill. 2d at 418, 235 Ill. Dec. 26, 704 N.E.2d 375.

committed any wrongdoing. Indeed, Officer Reed testified that at the time he requested defendant's identification, defendant was not doing anything suspicious and Officer Reed did not suspect defendant of committing a criminal offense. In the absence of a reasonable connection to the purpose of the stop or a reasonable, articulable suspicion, we consider whether the check impermissibly prolonged the detention or changed the fundamental nature of the stop. From the record, we cannot ascertain whether the warrant check prolonged the detention. Officer Reed testified at trial that he transmitted the driver's and defendant's information to county dispatch at the same time. Some time later, county dispatch informed Officer Reed that the driver's license was either suspended or revoked. County dispatch also informed Officer Reed that defendant had an outstanding warrant. However, Officer Reed did not testify that the warrant check performed on defendant was completed before the check on the driver. The warrant check performed on defendant could well have lengthened the duration of the detention if the officer had to wait for the results of the warrant check. Under the circumstances at bar, however, regardless of the duration of the detention, the warrant check was impermissible because it changed the fundamental nature of the traffic stop. The warrant check converted the stop from a routine traffic stop into an investigation of past wrongdoing by defendant. As Justice Murphy aptly observed in *Holt*,

> "*Terry's* scope requirement is a common sense limitation on the power of law enforcement officers. It prevents law enforcement officials from fundamentally altering the nature of the stop by converting it into a general inquisition about past, present and future wrongdoing, absent an independent basis for reasonable articulable suspicion or probable cause." *United States v. Holt*, 264 F.3d 1215, 1240 (10th Cir.2001) (Murphy, J., concurring in part and dissenting in part).

In *Gonzalez*, 204 Ill. 2d at 229, 273 Ill. Dec. 360, 789 N.E.2d 260, we acknowledged the divergence of opinion among the federal and state courts regarding the propriety of police questioning during a traffic stop. We noted that some jurisdictions look only to the length of the detention in determining the propriety of police questioning during the traffic stop. *Gonzalez*, 204 Ill. 2d at 230-31, 273 Ill. Dec. 360, 789 N.E.2d 260. We chose, however, to emphasize that the manner in which the traffic stop is conducted is an important consideration in determining the reasonableness of the stop. *Gonzalez*, 204 Ill. 2d at 233, 273 Ill. Dec. 360, 789 N.E.2d 260. As in *Gonzalez*, we acknowledge the tempestuous discourse in foreign jurisdictions as to whether a police officer can either request identification from a passenger or perform a check for outstanding warrants for the passenger's arrest using information obtained from the passenger. *E.g.*, compare *People v. Jackson*, 39 P.3d 1174 (Colo.2002) (evidence suppressed because police officer retained passenger's identification, instructed passenger to remain in vehicle and performed warrant check on passenger); *Sikes v. State*, 323 S.C. 28, 31, 448 S.E.2d 560, 563 (1994) (evidence suppressed where passenger was detained for 20 minutes while the officers "went fishing" for evidence of some crime); *Holt v. State*, 227 Ga.App. 46, 487 S.E.2d 629 (1997); *Commonwealth v. Alvarez*, 44 Mass. App. 531, 692 N.E.2d 106 (1998); *Hornberger v. American Broadcasting Cos.*, 351 N.J. Super. 577, 799 A.2d 566 (2002) (compiling cases); with *State v. Higgins*, 884 P.2d 1242, 1245 n. 2 (Utah 1994) (the officer could perform a warrant check because the passenger consented to drive the car, and the warrant check did not significantly extend "the period of time reasonably necessary to run" a check on the passenger's driver's license); *State v. Johnson*, 805 P.2d 761 (Utah 1991) (not within the scope of the traffic stop to do a warrant check on the passenger where the passenger had denied having a license); *State v. Mennegar*, 114 Wash.2d 304, 787 P.2d 1347 (1990) (a traffic stop does not involve an arrest

or seizure of the passenger; as part of a police officer's community caretaking function, the officer may ask a passenger if the passenger wishes to drive an intoxicated driver's vehicle and may run a check on the passenger's information); *State v. Larson,* 93 Wash.2d 638, 611 P.2d 771 (1980) (a police stop based on a parking violation committed by the driver did not reasonably provide the officer with grounds to require identification of passengers unless other circumstances gave the police independent cause to question them); and with *State v. Landry,* 588 So.2d 345, 348 (La. 1991) ("While the request for information (or perhaps even the removal from the car) may not have been reasonable if the officers had stopped a lone person on a college campus in broad daylight, the circumstances of the traffic stop in the present case made the request for identification from the two men reasonable"); *People v. O'Neal,* 32 P.3d 533 (Colo. App. 2000) (an officer's request for a passenger's name was part of a consensual interview; once the officer had reason to believe that the passenger had given a false name, the officer could conduct the investigatory stop which led to the discovery of the outstanding warrants); *State v. Chagaris,* 107 Ohio App.3d 551, 669 N.E.2d 92 (1995) (having obtained a passenger's identification information, the police officer could perform a warrant check because any questioning which occurred during the detention, even if unrelated to the scope of the detention, was valid so long as the questioning did not improperly extend the duration of the detention). We continue to adhere, however, to our analysis in *Gonzalez* that the length and scope of the detention must both be considered in determining the reasonableness of the traffic stop. Having applied the *Gonzalez* framework and considered both prongs of the *Terry* dual inquiry, we conclude that Officer Reed exceeded the proper scope of the traffic stop when he retained defendant's identification card and performed a check for outstanding warrants for defendant's arrest.

By our opinion today, we do not intimate that warrant checks are always improper. As we acknowledged in *Gonzalez*, 204 Ill. 2d at 234-35, 273 Ill. Dec. 360, 789 N.E.2d 260, "a rule governing the application of *Terry's* scope requirement to vehicle stops cannot be so permissive as to give police officers complete discretion in questioning the occupants of a stopped vehicle, nor can it be so limiting that any meaningful law enforcement activities are quashed." Circumstances may arise during a routine traffic stop that focus suspicion upon the passenger. The police officer may have a reasonable, articulable suspicion that the passenger has committed a crime, in which case a warrant check may be proper. See, *e.g.*, *Commonwealth v. Sinforoso*, 434 Mass. 320, 749 N.E.2d 128 (2001) . The passenger's conduct may cause the officer to fear for his safety.[4] We also do not address the situation where the passenger has violated a traffic law, such as riding in a car with an open container of alcohol. See 625 ILCS 5/11--502(b) (West 2000); *United States v. Henderson*, 229 F.Supp.2d 35 (D.Mass.2002).

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[4] Like the dissenting justices, the court recognizes that concerns about officer safety are "legitimate and weighty." *Pennsylvania v. Mimms*, 434 U.S. 106, 110, 98 S.Ct. 330, 333, 54 L.Ed.2d 331, 336 (1977). The court is mindful about the safety of officers in every situation where danger is present, as our case law aptly demonstrates. Today's ruling does not, in any way, alter our commitment to the safety of those entrusted to protect the public. In this case, we must emphasize that there was no testimony from Officer Reed regarding safety concerns. Moreover, we have made clear that a different set of factual circumstance may well yield a different conclusion based on safety concerns. Thus, while we share the anxiety of our dissenting colleagues over the number of officers killed during traffic stops, we simply cannot allow the understandable emotional reaction to such numbers to cloud our legal analysis, or ignore, as those in dissent appear to do, the fact that Officer Reed did not fear for his safety in this case.

Lastly, we distinguish the facts of the present case from a situation where the driver and passenger, knowing that the driver is being arrested or is otherwise incapable of driving, agree that the passenger should drive the vehicle. See, *e.g.*, *Higgins*, 884 P.2d at 1242.

C. Inevitable Discovery

The State argues that the evidence recovered from defendant should not be suppressed because the evidence would have been discovered independently of the warrant check and the ensuing search of defendant's person. According to the State, Officer Reed would have performed an inventory search of the vehicle; Officer Reed would have discovered the pea-sized rock of cocaine in the vehicle; Officer Reed would have searched defendant, as an occupant of a vehicle containing cocaine; and Officer Reed would have found the evidence on defendant's person which is the subject of this motion to suppress.

Defendant counters that the inevitable-discovery doctrine requires a showing of much more than the possibility that an inventory search would have been conducted. According to defendant, the State must show that a proper inventory search would have occurred, leading to the discovery of evidence. Defendant argues the State has not met its burden of showing that Officer Reed would have arranged for the vehicle to be towed and would have performed an inventory search. Defendant also maintains that the State has failed to show that defendant would have been in or near the vehicle at the time of an inventory search.

Pursuant to the inevitable-discovery doctrine, "evidence obtained in violation of an accused's constitutional rights and which otherwise would be inadmissible at trial may be admitted if the prosecution is able to show that the evidence 'would inevitably have been discovered without reference to the police error or misconduct.' " *People v. Edwards*, 144 Ill. 2d 108, 142,

161 Ill. Dec. 788, 579 N.E.2d 336 (1991), quoting *Nix v. Williams*, 467 U.S. 431, 448, 104 S.Ct. 2501, 2511, 81 L.Ed.2d 377, 390 (1984). The rationale for the inevitable-discovery doctrine is that "while 'the prosecution is not to be put in a better position than it would have been in if no illegality had transpired,' the prosecution should not be put 'in a worse position simply because of some earlier police error or misconduct.'" (Emphasis omitted.) *People v. Burnidge*, 178 Ill. 2d 429, 437, 227 Ill. Dec. 331, 687 N.E.2d 813 (1997), quoting *Nix*, 467 U.S. at 443, 104 S.Ct. at 2508, 81 L.Ed.2d at 387. Speculation and assumption will not support application of the inevitable discovery doctrine.

In the present case, without addressing the propriety of the inventory search conducted, we decline to apply the inevitable-discovery doctrine. We agree with the appellate court that the chain of events presupposed by the State for application of the doctrine is simply too tenuous. It strains the imagination to assume that, once Officer Reed told defendant the car would be towed, defendant would have stayed for the duration of the inventory search. It is a further stretch to assume that, upon discovery of the pea-sized rock of cocaine in the back seat of the vehicle, Officer Reed would have searched defendant, the front seat passenger, in the belief that defendant possessed cocaine. In that regard we note that the State charged only the driver of the vehicle with possession of the cocaine found in the vehicle. A court must not apply the inevitable-discovery doctrine "upon the basis of nothing more than a hunch or speculation as to what otherwise might have occurred." 5 W. LaFave, Search & Seizure § 11.4(a), at 247 (3d ed.1996).

CONCLUSION

In reaching our conclusion, we note that the case at bar involved only the suppression of the evidence recovered from

defendant during the course of the traffic stop. We were not called upon to determine the validity of any charges pressed upon defendant pursuant to the outstanding warrant for his arrest. We also note that the warrant check performed by Officer Reed was not related to the initial justification for the traffic stop, that is the illegal left turn the driver made. Further, the warrant check was not supported by a reasonable, articulable suspicion that defendant had committed or was about to commit a crime. Officer Reed neither saw nor suspected that defendant had committed any wrongdoing. Lastly, as noted above, a warrant check may be appropriate where a passenger's conduct causes the officer to fear for his safety. However, in the present case, Officer Reed did not testify to any safety concerns. Nor was there any intimation that the warrant check was "a precautionary measure to afford a degree of protection to the officer." *Mimms,* 434 U.S. at 110, 98 S.Ct. at 333, 54 L.Ed.2d at 336. Instead, Officer Reed testified that he requested identification from defendant and performed the warrant check because he wanted to release the car to defendant. These facts indicate that Officer Reed neither feared for his own safety nor for that of the general public. Under the circumstances, we conclude that the warrant check changed the fundamental nature of the traffic stop. The detention was unreasonable and the circuit court should have suppressed the evidence recovered from defendant's person. Accordingly, we affirm the judgment of the appellate court reversing the circuit court's denial of defendant's motion to suppress.

Appellate court judgment affirmed.

Justice FITZGERALD, dissenting:

The majority holds that, under the facts of this case, Officer Reed could not lawfully run a routine check for outstanding warrants, after he lawfully obtained identification from the

passenger of a lawfully stopped vehicle. In reaching this conclusion, the majority purportedly relies on this court's recent decision in *People v. Gonzalez,* 204 Ill. 2d 220, 273 Ill. Dec. 360, 789 N.E.2d 260 (2003). In *Gonzalez,* we made clear that common sense was not to be abandoned in determining what is "reasonable" in the context of a vehicle stop. *Gonzalez,* 204 Ill. 2d at 234-35, 273 Ill. Dec. 360, 789 N.E.2d 260. Today, the majority not only abandons common sense, but distorts fundamental principles of fourth amendment jurisprudence.

In *Gonzalez,* we held that, in judging the reasonableness of police questioning during a vehicle stop, where the questioning was neither related to the purpose of the stop nor justified by a reasonable, articulable suspicion of criminal conduct, "we must consider whether, in light of all the circumstances and common sense, the question impermissibly prolonged the detention or changed the fundamental nature of the stop." *Gonzalez,* 204 Ill. 2d at 235, 273 Ill. Dec. 360, 789 N.E.2d 260. The majority first speculates that the warrant check in the present case "could well have lengthened the duration of the detention." Op. __, Ill. Dec. at ___, ___ N.E.2d at ___. Constrained, however, by the absence of argument or evidence to that effect, the majority concludes that the warrant check "changed the fundamental nature of the traffic stop" by converting it into "an investigation of past wrongdoing by defendant." Op. ___ Ill. Dec. at ___-, ___ N.E.2d at ___-. The majority's analysis and ultimate conclusion fails to recognize that not all police conduct is created equal. That is, the majority opinion overlooks the significant difference between the police conduct at issue in *Gonzalez*--a face-to-face exchange between a police officer and a detained passenger--and the police conduct at issue in the present case--an unobtrusive check of information that is part of the public record. Consideration of this difference leads to the inescapable conclusion that Officer Reed did not exceed the bounds of the fourth amendment when he checked for outstanding warrants.

Roadside questioning by police of the passenger of a stopped vehicle can take many forms--from the totally benign to the highly intrusive. At the one extreme, an officer's questions may constitute nothing more than casual banter that elicits a neutral response. At the other extreme, an officer's questions may approach something akin to official interrogation that invites, or even compels, an incriminating response, possibly on matters divorced from the stop and unsupported by any newly aroused suspicion. The degree of intrusiveness permitted by the fourth amendment was the question we took up in *Gonzalez*. There, we were called upon to determine whether an officer's request for identification from the passenger of a lawfully stopped vehicle offends fourth amendment principles in the absence of a particularized suspicion of criminal conduct. In short, did the officer go too far?

In deciding this issue, we necessarily balanced the need for effective law enforcement, on the one hand, against the need to safeguard the privacy and security of passengers against arbitrary governmental invasions, on the other hand. *Gonzalez,* 204 Ill. 2d at 225, 234-36, 273 Ill. Dec. 360, 789 N.E.2d 260. We ultimately concluded that the officer's mere request for identification from the passenger was facially innocuous, did not suggest official interrogation, and was not the type of request that would increase the confrontational nature of the encounter, thus changing the stop in some fundamental way. We held that the officer's conduct did not make the otherwise lawful detention of the passenger unreasonable within the meaning of the fourth amendment. *Gonzalez,* 204 Ill. 2d at 235-36, 273 Ill. Dec. 360, 789 N.E.2d 260.

The police conduct at issue in the present case stands in stark contrast to the conduct at issue in *Gonzalez*. A warrant check is simply a computerized retrieval of information in the public record-information which indicates whether a court has entered a written order commanding the arrest of a specific

person. See 725 ILCS 5/107--1 (West 2002). Thus, a warrant check is never intrusive in the way that police questioning of a detained passenger can be. A warrant check involves no face-to-face exchange and does not even require the passenger's participation. It is never inquisitorial, confrontational, or suggestive of official interrogation. It does not invite, much less compel, an incriminating response. Further, the passenger has no reasonable expectation of privacy in the information retrieved during a warrant check, whether the police suspect the passenger of criminal activity or not. Accordingly, unless the warrant check impermissibly prolongs the passenger's detention--which was not the case here--no fourth amendment concerns arise.

I recognize that where the identity of the passenger is unknown, the officer cannot run a check for outstanding warrants unless the passenger assents to the officer's request for identification and permits this initial *de minimis* intrusion on his or her privacy. A warrant check, however, represents no further intrusion on the passenger's rights. Thus, if, under *Gonzalez,* a police officer may lawfully request identification from the passenger of a stopped vehicle, the additional step of a warrant check, without more, does not somehow change the "fundamental nature of the stop."

Stated another way, if a police officer lawfully detains a passenger like defendant by lawfully stopping the vehicle in which he is riding; lawfully obtains the passenger's identification; conducts a check for information in which the passenger can claim no privacy interest (information which even the majority could not seriously contend should be unavailable to police); does not require the passenger to implicate himself in possible criminal wrongdoing (as would, for example, a series of pointed questions irrelevant to the stop); does not intrude any further on the passenger's privacy or security (as would, for example, a search of his person or property); and does so

without unnecessarily prolonging the passenger's detention, *in what conceivable way have the passenger's fourth amendment rights been compromised? Where is the governmental intrusion?*

Under the majority's reasoning, even if Officer Reed was acquainted with the passenger and made no request for identification, he would have been prohibited from running a warrant check. The absurdity of this proposition is manifest. Thus, the majority opinion achieves what we sought to avoid in *Gonzalez:* "stripping any notion of common sense out of the 'reasonableness' equation." *Gonzalez,* 204 Ill. 2d at 234, 273 Ill. Dec. 360, 789 N.E.2d 260. As we stated, "Although our legal system is steeped with rules, standards, and formulas, logic and common sense should be no less a part of it." *Gonzalez,* 204 Ill. 2d at 234, 273 Ill. Dec. 360, 789 N.E.2d 260.

Moreover, the majority opinion makes no attempt to balance the competing governmental and individual interests that lie at the heart of fourth amendment analysis and drove our analysis in *Gonzalez.* See *Gonzalez,* 204 Ill. 2d at 224-25, 233-35, 273 Ill. Dec. 360, 789 N.E.2d 260, citing *Delaware v. Prouse,* 440 U.S. 648, 654, 99 S.Ct. 1391, 1396, 59 L.Ed.2d 660, 667-68 (1979); *Illinois v. McArthur,* 531 U.S. 326, 331, 121 S.Ct. 946, 950, 148 L.Ed.2d 838, 848 (2001). Instead, the majority establishes a new rule of fourth amendment jurisprudence that prohibits police from engaging in one of the most basic law enforcement techniques with no explanation other than the simple statement that it constitutes an "investigation of past wrongdoing." Op. ___ Ill. Dec. at ___-, ___ N.E.2d at ___. Nowhere in *Gonzalez* did we intimate that police should be barred from performing enforcement and investigatory functions. That is, after all, precisely what police do. What we said, in determining the acceptable parameters of police questioning during a routine traffic stop, is that police cannot conduct a " 'general inquisition about past, present and future wrongdoing,'

" absent a reasonable, articulable suspicion. *Gonzalez,* 204 Ill. 2d at 235, 273 Ill. Dec. 360, 789 N.E.2d 260, quoting *United States v. Holt,* 264 F.3d 1215, 1240 (10th Cir.2001) (Murphy, J., concurring in part and dissenting in part). Conducting a non-intrusive computerized check to determine if a judge has commanded the arrest of the passenger cannot reasonably be deemed a "general inquisition." The majority's conclusion to the contrary effectively creates a constitutional right to avoid justice.

The majority opinion also calls into question this court's decision in *People v. Cox,* 202 Ill. 2d 462, 270 Ill. Dec. 81, 782 N.E.2d 275 (2002). In *Cox,* we stated, without qualification, that an officer may conduct a speedy warrant check on the driver of a stopped vehicle. *Cox,* 202 Ill. 2d at 468, 270 Ill. Dec. 81, 782 N.E.2d 275, citing *People v. Ortiz,* 317 Ill. App. 3d 212, 220, 250 Ill. Dec. 542, 738 N.E.2d 1011 (2000); *People v. Easley,* 288 Ill. App. 3d 487, 491, 223 Ill. Dec. 826, 680 N.E.2d 776 (1997); *People v. Koutsakis,* 272 Ill. App. 3d 159, 163, 208 Ill. Dec. 549, 649 N.E.2d 605 (1995). The appellate court cases cited in *Cox* for this proposition did not expound on this point, and no specific justification for permitting a warrant check on the driver of a stopped vehicle was offered. The reason, perhaps, is that there is nothing inherently objectionable about such an investigative technique. See 4 W. LaFave, Search & Seizure § 9.2(f), at 51-58 (3d ed.1996). Today, the majority holds otherwise.

Under the court's present analysis, a warrant check will only comport with *Terry's* scope requirement if it is either related to the purpose of the stop, or supported by a reasonable, articulable suspicion of criminal conduct. A warrant check, however, will rarely, if ever, relate to the purpose of a routine traffic stop--issuing a warning or citation for an observed traffic violation. Nor will facts necessarily develop during a routine stop providing a reasonable, articulable suspicion of criminal

conduct. Although the present case involves a passenger, rather than the driver, the same *Terry* principles that govern the reasonableness of the officer's encounter with the passenger, also govern the reasonableness of the officer's encounter with the driver. Accordingly, under the majority's opinion, a driver can now legitimately argue that a warrant check "change[s] the fundamental nature of the traffic stop" by converting the stop "into an investigation of past wrongdoing." Op. ___ Ill. Dec. at ___-, ___ N.E.2d at ___-. Once again, the absurdity of the majority's position is evident.

Finally, I am compelled to comment on the majority's conclusion that because Officer Reed did not testify that he feared for his own safety, considerations of officer safety should not color our analysis in this case. Op. ___ Ill. Dec. at ___-, ___ N.E.2d at ___-. Officer safety is *always* at issue during a vehicle stop. Decades ago, the United States Supreme Court recognized that a state's concern for officer safety during a traffic stop is "both legitimate and weighty." *Pennsylvania v. Mimms,* 434 U.S. 106, 110, 98 S.Ct. 330, 333, 54 L.Ed.2d 331, 336 (1977). The Court cited the high incidence of police shootings when an officer approaches a suspect seated in an automobile, as well as the significant percentage of murders of police officers during traffic stops. *Mimms,* 434 U.S. at 110, 98 S.Ct. at 333, 54 L.Ed.2d at 336-37; see also *United States v. McRae*, 81 F.3d 1528, 1536 (10th Cir.1996) (acknowledging "the tragedy of the many officers who are shot during routine traffic stops each year"); *In re Arturo D.,* 27 Cal.4th 60, 85 n. 23, 38 P.3d 433, 450 n. 23, 115 Cal.Rptr.2d 581, 600 n. 23 (2002) ("Nationwide, 13 law enforcement officers feloniously were killed while enforcing traffic laws in the year 2000," and that same year "6,234 officers were assaulted during traffic pursuits and stops"), citing FBI, Uniform Crime Reports, Law Enforcement Officers Killed and Assaulted, at 28, 83 (2000); *State v. Richards,* 201 Wis.2d 845, 875, 549 N.W.2d 218, 230 (1996) (Abrahamson, J., concurring) ("From 1978-94 about

twice as many officers were killed in traffic pursuits or stops as were killed in arrest situations involving drug-related matters"), citing U.S. Dept. of Justice Hindelang Criminal Justice Research Center, 1994 Sourcebook of Criminal Justice Statistics, at 357; *State v. Lund,* 119 N.J. 35, 37, 573 A.2d 1376, 1377 (1990) ("One study of State Police officers killed nationwide in the line of duty from September 1976 to September 1982, shows that 40 percent of the troopers killed by gunfire were fatally wounded while making traffic stops").

More recently, the Court has recognized that the possible sources of harm to an officer increase where a passenger is present. *Maryland v. Wilson,* 519 U.S. 408, 413, 117 S.Ct. 882, 885, 137 L.Ed.2d 41, 47 (1997). This court, until today, has also considered the risk of harm to a police officer during a routine traffic stop in determining the permissible scope of the officer's authority with respect to the passenger. See *People v. Gonzalez,* 184 Ill. 2d 402, 418, 235 Ill. Dec. 26, 704 N.E.2d 375 (1998) (concluding that the public interest in officer safety outweighs the potential intrusion to the passenger's liberty interest in being ordered to remain at the scene). The majority's present stance, that officer safety cannot be at issue unless the officer testifies to a subjective fear, is unjustified under the case law, totally divorced from reality, and does a grave disservice to police officers.

In a footnote, the majority purports to recognize the legitimacy of concerns over officer safety. Op. ___ Ill. Dec. at ___-, ___ N.E.2d at ___-, n. 4. The majority nonetheless denigrates the dissenters' concerns, characterizing them as nothing more than an "emotional reaction" which we have allowed to "cloud" our judgment in this case. Op. ___ Ill. Dec. at ___-, ___ N.E.2d at ___-, n. 4. I freely admit that the number of police officers killed each year during traffic stops strikes a very real emotional chord. How could it not? The suggestion, however, that I, and my colleagues in dissent, have elevated

emotion over legal analysis is at best unfounded, and at worst a poor attempt to direct attention away from the other significant flaws in the majority opinion.

As set forth above, the majority opinion misrepresents this court's holding in *Gonzalez*, 204 Ill. 2d 220, 273 Ill. Dec. 360, 789 N.E.2d 260. Further, it distorts basic principles of fourth amendment jurisprudence. In addition, the majority opinion is inconsistent with statements the same majority made in *Cox*. In response to these observations, the majority has made no attempt to shore up its tortured fourth amendment analysis, nor any attempt to reconcile today's holding with *Cox*. These are weighty and legitimate matters which the majority needs to address and which are far more significant than unwarranted suggestions that the dissenting justices are ruled by emotion.

I dissent.

Justices THOMAS and GARMAN join in this dissent.

Justice THOMAS, also dissenting:

In *People v. Gonzalez*, 204 Ill. 2d 220, 273 Ill. Dec. 360, 789 N.E.2d 260 (2003), I predicted that "[t]he lower courts and the police will find the majority's rule difficult to follow because the majority does not explain what type of questioning would change the fundamental nature of the stop." *Gonzalez*, 204 Ill. 2d at 242, 273 Ill. Dec. 360, 789 N.E.2d 260 (Thomas, J., specially concurring). Today's decision demonstrates that my fears were not unwarranted. Nevertheless, I agree with Justice Fitzgerald that, to the extent that a workable rule emerged from *Gonzalez*, that rule is not being applied faithfully in this case. I therefore join in Justice Fitzgerald's dissent.

No. 3–00–0190

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 2001

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the
	)	12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois
	)	
v.	)	No. 97 CF 5127
	)	
RAYMOND HARRIS,	)	Honorable
	)	Daniel J. Rozak,
Defendant-Appellant.	)	Judge Presiding

October 12, 2001 PUBL. IN FULL

Justice McDADE delivered the Opinion of the Court:

A Will County jury convicted defendant Raymond E. Harris of unlawful possession of a controlled substance (cocaine) (720 ILCS 570/402(c) (West 1996)). The court subsequently sentenced defendant to 24 months' probation. Defendant appeals. The sole issue on review is whether the trial court erred in denying defendant's pre-trial motion to quash arrest and suppress evidence. We reverse defendant's conviction.

FACTS

Defendant was a passenger in an automobile driven by Keith Weathersby on the afternoon of September 27, 1997. Weathersby made an illegal left turn from Route 53 onto Mills Road. Will County Deputy Sheriff Vernard Reed observed the maneuver and activated the overhead emergency lights of his squad car to pull the vehicle over. Reed approached and asked Weathersby for his driver's license and proof of insurance. Weathersby said he did not have his license on his person. He gave a false name because his license was revoked. Reed ran a computer check of the false identification through county dispatch, which was returned showing no valid driver's license. When he returned to the Weathersby vehicle, Reed again spoke with Weathersby. Weathersby then gave his true name and date of birth and told Reed that he had lied at first because his license was revoked. Although Reed had observed no suspicious conduct on defendant's part, he asked defendant for identification. Defendant handed Reed a state identification card. Reed ran another computer check and learned that there was an active warrant for defendant's arrest for failure to appear in court.

Reed then placed defendant under arrest and conducted a search of his person. Reed found a pea-sized rock of cocaine in defendant's pocket and a "Chore Boy," which Reed said could be used to smoke crack cocaine. A subsequent search of Weathersby's vehicle resulted in the discovery of another rock of cocaine in the back seat. Consequently, both men were charged with unlawful possession of a controlled substance.

At the suppression hearing, Reed testified that he asked defendant for identification because he intended to get an I-bond issued for Weathersby and avoid a tow by releasing the vehicle to defendant if he had a valid driver's license. Reed also said that the driver would have been charged with driving while revoked, and the vehicle would have been towed and

searched incident to the arrest, if the cocaine had not been discovered during the search at the scene. Defendant testified that Reed never asked if he had a valid license.

Based on the evidence, the trial court denied defendant's motion to quash arrest and suppress evidence. The court reasoned that when Reed asked for defendant's identification, he intended to find out if defendant had a valid driver's license to avoid having the vehicle towed. The driver's license check co-incidentally revealed an active warrant for defendant's arrest. Therefore, the court reasoned, Reed acted properly in arresting defendant and conducting a earch incident to the arrest.

At trial, defendant testified that he met Weathersby on the day of the arrest and requested a ride to a liquor store. He said he was unaware of any cocaine until Reed pulled the rock out of his pocket. He said he cut hair for people and used the "Chore Boy" to clean his combs. Weathersby, testifying for the State, said defendant offered to help him get cocaine in Preston Heights on the date of the arrest. Weathersby subsequently pleaded guilty to unlawful possession of a controlled substance and received an 18-month term of probation.

Based on the evidence, the jury found defendant guilty as charged. His post- trial motion was denied, and he was sentenced, as aforesaid.

ISSUE AND ANALYSIS

Defendant contends that his conviction must be reversed because either (a) Reed was not authorized to ask for his identification, or (b) Reed improperly conveyed the impression that defendant was legally obligated to surrender identification. In support of his arguments, defendant cites *People v. Branch*, 295 Ill. App. 3d 110, 229 Ill. Dec. 625, 692 N.E.2d 398 (1998); and *People v. Smith*, 266 Ill. App. 3d 362, 203 Ill. Dec. 727,

640 N.E.2d 647 (1994). In response, the State argues that (1) defendant's arguments are waived by his failure to include the suppression issue in his post-trial motion; (2) the trial court's ruling on the suppression motion was not manifestly erroneous; and (3) the court's ruling should be sustained on the ground of inevitable discovery.

1. Waiver

Initially, we reject the State's waiver argument. The waiver rule is a limitation on the parties, and not on the court's jurisdiction. *People v. Shaw,* 186 Ill. 2d 301, 239 Ill. Dec. 311, 713 N.E.2d 1161 (1998). We deem defendant's issue in this case sufficiently significant to merit our review, despite defendant's failure to properly preserve it below.

2. The Trial Court's Ruling

Generally, a circuit court's ruling on a motion to quash arrest and suppress evidence should not be reversed unless it is manifestly erroneous. *People v. Krueger,* 175 Ill. 2d 60, 221 Ill. Dec. 409, 675 N.E.2d 604 (1996). However, where, as here, the facts are uncontroverted, the issue is a question of law which we review *de novo. Krueger,* 175 Ill. 2d 60, 221 Ill. Dec. 409, 675 N.E.2d 604.

For fourth amendment purposes, a seizure does not occur merely because a police officer approaches an individual and asks questions. *Florida v. Bostick,* 501 U.S. 429, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991). Even if an officer has no basis for suspecting an individual of criminal activity, the officer may ask for identification of a person who is lawfully stopped, as long as the officer does not convey the message that compliance with the request is required. *Bostick,* 501 U.S. 429, 111 S.Ct. 2382, 115 L.Ed.2d 389. If a reasonable person in the defendant's position would feel free to disregard the police, the encounter is deemed consensual and will not trigger fourth

amendment protection. *Bostick,* 501 U.S. 429, 111 S.Ct. 2382, 115 L.Ed.2d 389.

A defendant is lawfully stopped when he is a passenger in a vehicle stopped for a traffic violation. *People v. Smith,* 266 Ill. App. 3d 362, 203 Ill. Dec. 727, 640 N.E.2d 647 (1994). If there is no reason to suspect the passenger of criminal activity, the police may ask for, but may not demand the passenger's identification. *People v. Jennings,* 185 Ill. App. 3d 164, 133 Ill. Dec. 318, 541 N.E.2d 155 (1989); *cf. People v. Branch,* 295 Ill. App. 3d 110, 229 Ill. Dec. 625, 692 N.E.2d 398 (1998) (holding that officer is not authorized to ask for passenger's identification without reasonable suspicion of criminal activity). This is because a reasonable person may voluntarily comply with an officer's mere request, but he would not feel free to refuse an officer's order. *Smith,* 266 Ill. App. 3d 362, 203 Ill. Dec. 727, 640 N.E.2d 647. Consequently, the issue on a motion to quash and suppress in such cases is whether a reasonable person in the defendant's position would have felt free to decline the officer's request. *Smith,* 266 Ill. App. 3d 362, 203 Ill. Dec. 727, 640 N.E.2d 647; *Bostick,* 501 U.S. 429, 111 S.Ct. 2382, 115 L.Ed.2d 389.

In this case, the trial court improperly focused on Reed's subjective intent rather than the totality of the circumstances to determine whether a reasonable person in defendant's position would have felt free to decline Reed's request. From defendant's perspective, the following scenario unfolded: Weathersby had just been pulled over by the flashing emergency lights of a Will County deputy sheriff's squad car. Through radio transmission, the officer caught Weathersby lying about his identification. Weathersby then admitted that he was driving illegally and was about to be charged with the offense. At that point, and with no reason to suspect defendant of any wrongdoing, Reed requested defendant's identification.

Offering no explanation for the request, and giving no indication that he merely wanted to ascertain if defendant could drive the vehicle, Reed conveyed the message that compliance with the request for identification was mandatory. Under the circumstances, no reasonable person would have felt free to disregard the officer and terminate the encounter without tendering identification. Consequently, we conclude that, under the totality of the circumstances, defendant's compliance was not voluntary, and his motion to quash and suppress should have been granted. See *Jennings*, 185 Ill. App. 3d 164, 133 Ill. Dec. 318, 541 N.E.2d 155.

3. Inevitable Discovery

Finally, the State argues that, even if the court erred in ruling that Reed acted properly in requesting defendant's identification, the court's ruling on the suppression motion should be sustained on the ground of inevitable discovery. The inevitable discovery doctrine allows admission of evidence that would otherwise be suppressed if the State establishes that the evidence would have been discovered without reference to the illegal search or seizure. *People v. Perez*, 258 Ill. App. 3d 133, 196 Ill. Dec. 461, 630 N.E.2d 158 (1994).

The State theorizes that Reed would have inventoried Weathersby's vehicle prior to towing it, and that discovery of the cocaine in the back seat would have led to a search of defendant's person and discovery of cocaine in his pocket. This argument leaves too much to speculation. It is just as likely that defendant would have left the scene and gone about his own business if Reed had told him that the car was going to be towed.

CONCLUSION

For the reasons stated, we conclude that the trial court erred in denying defendant's motion to quash arrest and suppress evidence. Without the evidence, the prosecution will be unable to proceed against defendant. Therefore, defendant's conviction is reversed outright. See *People v. Blair*, 321 Ill. App. 3d 373, 254 Ill. Dec. 872, 748 N.E.2d 318 (2001).

Reversed.

SLATER and LYTTON, JJ., concurring.

IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT, WILL COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	No. 97 CF 5127
Plaintiff,	)	
	)	Honorable
RAYMOND E. HARRIS,	)	Amy Bertani-Tomezak,
	)	Judge Presiding.
Defendant.	)	

Excerpt from Transcript of Proceedings, November 5, 1999

* * *

THE COURT: Allright. The matter is up on my decision as to the motion.

The officer testified that although he didn't put it in his report, he testified, and I don't think there is any disagreement, there was a legal stop. The officer testified there was a legal stop and the driver, I think Keith Weathersby, had made an illegal turn. There was a lawful stop. He approached the driver and the driver first gave a false name, and eventually he arrested him for no valid driver's license. And he testified his intent was to issue a citation. And to avoid a tow, if the passenger had a driver's license, then he was going to issue or call in and see if he could give the defendant -- or the driver a recognizance bond, and not tow the car. So he told the Court that he took steps to do that. And when he asked Mr. Harris for his ID, he ran him to find out whether or not he had a valid driver's license and it turned out he had a warrant for his arrest. And

then there was a search, incident to the warrant -- or to the arrest.

Though it wasn't in his report, there is nothing to indicate that the officer didn't intend what he told me he intended, so, Mr. Harris, I am going to find that the officer acted properly in asking for your identification and when he found out there was a warrant for your arrest.

So I am going to deny your motion.

And would you like me to set the matter for trial then, Miss Goodman?

* * *